UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:16-cv-314-MOC (3:95-cr-1-5-MOC-1)

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)	<u>ORDER</u>
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THIS MATTER is before the Court on the Government's Motion to Place Motion Under 28 U.S.C. § 2255 in Abeyance, (Doc. No. 17).

Petitioner was convicted in the underlying criminal case of offenses including possession of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c) based on the offense of murder in aid of racketeering. He filed his *pro se* § 2255 Motion to Vacate in June 2016, arguing that <u>Johnson v. United States</u>, 135 S.Ct. 2551 (2015), applies to 18 U.S.C. § 924(c). Petitioner was subsequently appointed counsel. (Doc. No. 4). This matter was stayed for several years pending consideration of <u>Beckles v. United States</u>, No. 15-8544, (Doc. No. 8), then <u>United States v. Ali</u>, No. 15-4433 and <u>United States v. Simms</u>, No. 15-4640, (Doc. No. 10), and finally <u>United States v. Davis</u>, 18-431, (Doc. No. 12).

The Government now asks the Court to again hold the action in abeyance until the United States Supreme Court decides <u>Walker v. United States</u>, 19-373, which will examine whether an offense that can be committed with *mens rea* of recklessness can qualify as a "violent felony" under the Armed Career Criminal Act. (Doc. No. 17). The Government asserts that the question

presented in <u>Walker</u> is likely to bear on, or dispose of, the issue raised in Petitioner's § 2255 Motion to Vacate. Petitioner' seeks 45 days after the Court issues its decision in <u>Walker</u> within which to file its response. The Government notes that Petitioner is currently serving life sentences on two counts that he does not challenge. Counsel for Petitioner do not object to this Motion. (Doc. No. 17 at 2).

The Government's Motion to Hold Case in Abeyance is **GRANTED**. The Government shall have 45 days after the United States Supreme Court issues its decision in <u>Walker</u> within which to file its response.

IT IS SO ORDERED.

Signed: December 3, 2019

Max O. Cogburn Jr United States District Judge